

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1161

Traffic Offenses

SPONSOR(S): Evers

TIED BILLS:

IDEN./SIM. BILLS: SB 968

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	17 Y, 2 N	Brown	Miller
2)	Public Safety & Domestic Security Policy Committee		Padgett	Kramer
3)	Economic Development & Community Affairs Policy Council			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

Currently, any person who commits a noncriminal moving violation that causes the death or serious bodily injury of another must appear in front of the court to dispose of the infraction. For a civil traffic infraction, the court may order a person to attend driver improvement school and to complete up to 120 hours of community service.

The bill creates criminal penalties for operators of motor vehicles who commit moving violations that cause serious bodily injury or death to a person operating a motor vehicle or motorcycle; or riding as a passenger in a motor vehicle or on a motorcycle.

The bill provides a driver who commits a moving violation that causes serious bodily injury to a person riding on a motorcycle or in a motor vehicle commits a second-degree misdemeanor punishable by a \$500 fine, minimum 30 days of incarceration, attendance at a driver improvement course, and a minimum driver's license suspension for 30 days.

The bill provides a driver who commits a moving violation that causes the death of a person riding on a motorcycle or in a motor vehicle commits a first-degree misdemeanor punishable by a \$1,000 fine, minimum 90 days of incarceration, attendance at a driver improvement course, and a license suspension for at least one year.

The bill requires imprisonment for a range of offenses that do not currently warrant imprisonment under the Florida Statutes. This could have a potentially significant impact on county jails.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Moving Violations, Generally**

Under Chapters 316 and 318, all moving violations are considered non-criminal infractions and are generally punishable by a fine as provided by s. 318.18, F.S. Moving violations include such offenses as speeding, failure to stop at a stop sign or traffic control device, and improper lane change.<sup>1</sup> This section provides a baseline fine of \$60 for all moving violations,<sup>2</sup> although county-by-county fees and surcharges raise the total amount paid. The section also provides tiered fines from \$25 to \$250 for moving violations involving excessive speed.<sup>3</sup>

Moving violations also typically result in points assessed against an operator's driver's license pursuant to s. 322.27(3)(d), F.S.

##### **Penalties for Causing Death or Injury**

##### *Non-Criminal Violations*

A mandatory hearing before the court is required for any infraction or criminal violation of Chapter 316 that causes serious bodily injury or death.<sup>4</sup> Any person committing a traffic infraction causing death may be directed by a judge to perform 120 community service hours in a trauma center, pursuant to s. 316.027(4), F.S.<sup>5</sup>

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<sup>1</sup> See generally Ch. 316, F.S.

<sup>2</sup> Sec. 318.18(3)(a), F.S.

<sup>3</sup> Sec. 318.18(3)(b), F.S.

<sup>4</sup> Sec. 318.19(1)-(2), F.S.

<sup>5</sup> The permissive 120 hours of community service are referenced twice in Chapter 318:

**318.14(1), F.S.:** "If another person dies as a result of the noncriminal infraction, the person cited may be required to perform 120 community service hours under s. [316.027\(4\)](#), in addition to any other penalties."

**318.18(8)(c), F.S.:** "If the noncriminal infraction has caused or resulted in the death of another, the person who committed the infraction may perform 120 community service hours under s. [316.027\(4\)](#), in addition to any other penalties."

For any traffic infraction or criminal offense causing death, injury, or property damage, the Department of Highway Safety and Motor Vehicles (DHSMV) may require re-examination of the offender's ability to drive. DHSMV may subsequently suspend the offender's license.<sup>6</sup> DHSMV may suspend an offender's license if the person refuses to submit to a re-examination. Refusal to submit to retesting is grounds to suspend the offender's license.<sup>7</sup> The court may suspend the driver's license for any criminal violation.<sup>8</sup>

### *Criminal Violations*

For any criminal traffic offense causing death or an injury sufficient to require medical transport, the department shall mandate a driver-improvement course (in addition to any other applicable penalties). Failure to attend a driver improvement course results in cancellation of the offender's license until the course is completed.<sup>9</sup> If the criminal offense is murder, manslaughter, or a second DUI manslaughter conviction, the DHSMV shall revoke the offender's license.<sup>10</sup> License suspension for a manslaughter conviction may not be lifted unless the offender has completed a driver improvement or substance abuse program.<sup>11</sup>

A person who commits the offense of reckless driving causing injury or death commits a third-degree felony, punishable separately from fines related to reckless driving.<sup>12</sup> If the court reasonably believes alcohol was involved, the court shall order the offender to attend a substance abuse program.<sup>13</sup>

An impaired driver who causes an accident involving injury or death commits a third-degree felony, punishable separately from the potential fine and/or incarceration related to the DUI.<sup>14</sup>

A person driving without a valid license who negligently causes an accident involving death or serious bodily injury is guilty of a third-degree felony.<sup>15</sup>

### **Proposed Changes**

The bill creates s. 316.195, F.S., to provide enhanced penalties for certain moving violations if such violations result in serious bodily injury or death to a person operating or riding on a motorcycle or operating or riding as a passenger in a motor vehicle.

The bill provides a driver who commits any moving violation that causes serious bodily injury to a person operating or riding on a motorcycle or operating or riding as a passenger in a motor vehicle commits a second-degree misdemeanor punishable by a \$500 fine, minimum 30 days of incarceration, mandatory attendance at a driver improvement school, and license suspension for a minimum of 30 days.

The bill provides a driver who commits any moving violation that causes the death of a person operating or riding on a motorcycle or operating or riding as a passenger in a motor vehicle commits a first-degree misdemeanor punishable by a \$1,000 fine, minimum 90 days of incarceration, mandatory attendance at a driver improvement school, and a license suspension for at least one year.

The bill provides that the enhanced penalties do not prohibit an offender with being charged with, or convicted of, any other violation of law.

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<sup>6</sup> Sec. 322.221(2)(a), F.S.

<sup>7</sup> Sec. 322.221(3), F.S.

<sup>8</sup> Sec. 316.655(2), F.S.

<sup>9</sup> Sec. 322.0261(2), F.S.

<sup>10</sup> Sec. 322.26, F.S.(1)(a)-(b), F.S.

<sup>11</sup> Sec. 322.291(1)(a)3., F.S.

<sup>12</sup> Sec. 316.192(3)(c)2., F.S.

<sup>13</sup> Sec. 316.192(5), F.S.

<sup>14</sup> Sec. 316.193(3)(c)2., F.S.

<sup>15</sup> Sec. 322.34(6)(a)-(b), F.S. In a related offense, if a person knowingly loans a vehicle to a person whose license is suspended, and the borrower causes death or injury, the owner's license is suspended for one year (322.36, F.S.).

**B. SECTION DIRECTORY:**

- Section 1** Creates s. 318.195, F.S., providing enhanced penalties for moving violations that result in serious bodily injury or death to a person operating or riding on a motorcycle or a person operating or riding in a motor vehicle; providing that such penalties do not prohibit the application of other penalties.
- Section 2** Provides an Effective Date of October 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill could result in an indeterminate amount of revenue collected by fines levied under the bill.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill could result in an indeterminate amount of revenue collected by fines levied under the bill.

2. Expenditures:

The bill requires imprisonment for a range of offenses that do not currently warrant imprisonment under the Florida Statutes. This could potentially have a significant impact on county jails.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill would have a negative fiscal impact on motor vehicle operators who commit traffic infractions that cause injury to motorcyclists or persons in motor vehicles. Beyond the fine itself and costs of driving school, many violators would also presumably lose part of their earnings if unable to work while incarcerated for the minimum required sentence.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

There are few mandatory jail sentences for traffic related criminal offenses, and no mandatory jail sentences for noncriminal offenses. For example, mandatory sentences are imposed for a second DUI conviction within five years of a previous conviction, and a third DUI conviction within 10 years of the previous convictions.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 11, 2009, the Roads, Bridges, and Ports Policy Committee reported the bill favorably with no amendments.